IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.986 OF 2006

Aeroflex Industries Private Limited & anr. Petitioners
vs.
Union of India & ors. Respondents

Mr.S.A.Bhagwat i/b.M/s.V.Deshpande & Co. for the petitioners.

CORAM : R. M. LODHA &
J. P. DEVADHAR,JJ.

DATED : 10th April, 2006

P.C.

Heard Mr.S.A.Bhagwat, the counsel for the petitioners and perused the averment made in the writ petition and the Excise Circular dated 29th May, 2003 impugned in the present writ petition.

2. The first petitioner is a company and carries on the business in the manufacture of steel and its allied products. It is the case of the company that they were using stainless steel rods purchased from Garg Sales Company Private Limited (respondent no.3) for manufacturing stainless steel wires. As per the circular No.570/7/2001-CX dated 16th February, 2001 which clarified that drawing of wires from wire rods amounted to 'manufacture' under Section 210 of the Central Excise Act, 1944, the first petitioner took Cenvat Credit against the stainless steel rods purchased

from the respondent no.3 during the relevant period. Vide Circular dated 29th May, 2003, the clarification made in the earlier circular dated 16th February, 2001 was withdrawn. Now, the Excise Department vide their communication dated 10th November, 2004 has asked the first petitioner to debit Cenvat Credit amounting to Rs.14,53,537/- availed of by them. The Circular dated 29th May, 2003 whereby the earlier Circular dated 16th February, 2001 has been withdrawn is sought to be challenged in this writ petition.

3. The impugned circular was issued on 29th May, 2003. By filing this writ petition in the month of February, 2006, the said circular is sought to be challenged. We are afraid, the petitioners cannot be permitted to challenge the circular dated 29th May, 2003 after a gross delay of about 2 years 9 months.

4. Besides that we find no illegality in the circular dated 29th May, 2003.

5. More importantly, what appears to us is that in the garb of the present writ petition, the petitioners seek to impugn the criminal action initiated by the respondent no.3 against them for dishonour of the cheque in the sum of Rs.16,32,993/- which was issued by the first petitioner in favour of the respondent no.3. The

writ petition, thus, is actuated with motive in challenging the criminal proceedings having been initiated by the respondent no.3 against the first petitioner in the garb of challenge to the circular dated 29th May, 2003.

6. Writ petition does not deserve to be entertained.

Dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)